

Appl. No. 09/944,268

Amtd. dated March 3, 2004

Response to Office action of January 12, 2004

**REMARKS/ARGUMENTS**

Claims 1-5 and 7-16 remain in this application. Claim 6 has been cancelled. Claims 10-12 are allowed. The examiner has acknowledged that claims 5, 7-9, and 13-16 are directed to allowable subject matter.

**I. CLAIM REJECTIONS – 35 U.S.C. § 102**

MPEP § 2131 provides:

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."

"The identical invention must be shown in as complete detail as is contained in the ... claim."<sup>2</sup>

**A. Rejection of Claims 1 and 2 Under 35 U.S.C. § 102(b) as Anticipated by Lukez**

The examiner rejected claims 1 and 2 under 35 U.S.C. § 102(b) as being anticipated by Lukez (U.S. Patent No. 5,065,892).

Regarding claim 1, the examiner stated that Lukez teaches a structure for mounting sensors in containers including a conventional bracket 4 with a lower flange 8 or base portion, a sleeve like projection 24 extending from the flange, and a bracket extension 36 with sleeve like side wall 40. The examiner stated that the bracket extension or second sleeve is removable and slidably engagable with the projection or first sleeve by inspection. The examiner stated that the extension or removable second sleeve may be prevented from complete rotation relative to the projection or first sleeve when engaged with the projection by the clamp 66 that "secures" the members together. The examiner stated that though Lukez does not expressly recite the members being prevented from rotating relative to one another, the examiner considers this to be an inherent result when the clamp 66 is sufficiently tightened due to friction and the close fit as shown. Regarding claim 2, the examiner stated that the flange 8 or base includes a top surface, at least one side surface, and a bottom surface as shown in the figures.

Claims 1 and 2 require a removable second sleeve and a first sleeve that can retain a transducer even when the second sleeve is removed. However, Lukez does not disclose being able to remove the second sleeve and still have the first sleeve be able to retain the transducer. In fact Lukez, teaches directly away from the first sleeve retaining the transducer when the second sleeve is removable

<sup>1</sup> *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

<sup>2</sup> *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

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because it teaches the second sleeve having a flange for engaging a third sleeve to retain the transducer. Thus, Lukez would not be able to retain the transducer without the second sleeve engaged with the first sleeve. Thus, contrary to the examiner's statement that all elements are disclosed by Lukez, this element is not. Therefore, the rejection is unsupported by the art and should be withdrawn.

## **II. CLAIM REJECTIONS - 35 U.S.C. § 103**

### **A. Rejection of Claims 3 and 4 Under 35 U.S.C. § 103(a) as Being Unpatentable Over Lukez and Admitted Prior Art**

The examiner rejected claims 3 and 4 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Lukez and Admitted Prior Art.

Regarding claim 3, the examiner stated that Lukez applied to claim 1 further discloses holes extending through the flange or base top surface for screws to fixedly engage the holes and the device to a container housing. The examiner admitted, however, that Lukez lacks the transducer mount including slots on the base top surface at the attaching holes. The examiner stated that the Admission teaches slots at the base attaching holes as shown in figure 1. The examiner stated that it would have been obvious to one having ordinary skill in the art at the time the invention was made to include slots in the base at the attaching holes in order to allow the use of shorter fasteners while providing for a stiff and secure base that will not flex and disrupt the seal between the base and the container. Regarding claim 4, the examiner maintained the unchallenged Official Notice that it is widely known in the art to provide slits, slots, and grooves in various devices and one of ordinary skill would have known of their advantageous use in allowing easy separation by prying with a screwdriver.

Applicants repeat the arguments made above for claim 1. If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious.<sup>3</sup> As claims 3 and 4 depend from claim 1, claims 3 and 4 are also not obvious under 35 U.S.C. § 103(a). Therefore, the rejection should be withdrawn with respect to dependent claims 3 and 4 as well.

## **III. ALLOWABLE SUBJECT MATTER**

The examiner stated that claims 5, 7-9, and 13-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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<sup>3</sup> MPEP § 2143.03.

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Applicant repeats its statements made above for claim 1. Claims 5, 7-9, and 13-16 depend either directly or indirectly from claim 1 and therefore require all of the limitations of claim 1. Applicant thus respectfully submits that claims 5, 7-9, and 13-16 are in condition for allowance.

The Examiner stated in the previous Office action dated April 21, 2003 that claims 10-12 are allowed.

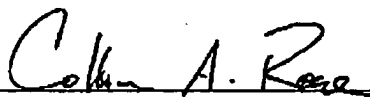
### CONCLUSION

Applicant respectfully requests reconsideration the pending claims and that a timely Notice of Allowance be issued in this case. If the examiner feels that a telephone conference would expedite the resolution of this case, he is respectfully requested to contact the undersigned.

In the course of the foregoing discussions, applicants may have at times referred to claim limitations in shorthand fashion, or may have focused on a particular claim element. This discussion should not be interpreted to mean that the other limitations can be ignored or dismissed. The claims must be viewed as a whole, and each limitation of the claims must be considered when determining the patentability of the claims. There may also be other distinctions between the claims and the prior art that have yet to be raised, but that may be raised in the future.

If any fees are inadvertently omitted or if any additional fees are required or have been overpaid, please appropriately charge or credit those fees to Conley Rose, P.C. Deposit Account Number 03-2769 (ref. 1787-11800) of Conley Rose, P.C., Houston, Texas.

Respectfully submitted,  
CONLEY ROSE, P.C.



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